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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,212	02/06/2002	Neal E. Fearnot	3433-338	8926

7590

07/03/2003

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EXAMINER

BARRETT, THOMAS C

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/068,212

Applicant(s)

FEARNOT ET AL.

Examiner

Thomas C. Barrett

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "collagenous extra cellular matrix".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 13-37, and 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Khoshavari et al. (5,618,299). Khoshavari et al. discloses a medical device (FIG. 26) comprising: a plurality of apertures (395) and extensions (390) shaped to be inserted into the apertures, and three layers comprising the two polymer layers as shown in FIG. 2, and an "intermediate" layer of pyrolytic carbon, a biomaterial (col. 3, line 56- col. 4, line 4). The extensions in the apertures as in FIG. 26 create non-continuous seams and a plurality of longitudinal seam edges.

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Art Unit: 3738

Claims 31, and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiles et al. (WO 98/25543). Hiles et al. discloses a tubular medical device free from a continuous seam edge in the lumen (FIG. 5c) comprising submucosa tissue (a collagenous material) having extracellular matrix material (p 4, lines 6-12) and a seam formed by a butt joint (FIG. 5c).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-12 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khoshavari et al. (5,618,299) as above in view of Hiles et al. (WO 98/25543). Khoshavari et al. discloses a tubular medical device with a plurality of apertures and generally rectangular extensions however Khoshavari et al. fails to disclose the device comprising a collagenous material. Hiles et al. teaches a medical device comprising submucosa tissue (a collagenous material) (p 4, lines 6-12), which is remodeled into host replacement tissue with site-specific structural and functional properties (p 3, lines 14-24). It would have been obvious to one of ordinary skill in the art to combine the teaching of a medical device comprising submucosa tissue (a collagenous material), as taught by Hiles et al., to a tubular medical device as per

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Art Unit: 3738

Khoshavari et al., in order to provide a material that is remodeled into host replacement tissue with site-specific structural and functional properties.

Conclusion

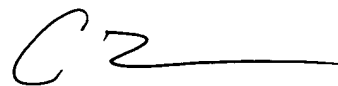
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3580 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0850.



Thomas Barrett
June 30, 2003



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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